

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Spring Dale Post Office	
Spring Dale, WV, 25986	

Document Number: A2012-68

INITIAL BRIEF OF PETITIONER PAUL MCCLUNG
(December 19, 2011)

Respectfully submitted,

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INITIAL BASIS OF THE CASE

On October 21, 2011, a “Final Determination to Close the Spring Dale, WV, Post Office and Extend Service by Highway Contract Route Service” was posted in the Spring Dale Post Office.

Paul McClung, the Petitioner herein, subsequently submitted an appeal, dated October 31, 2011, to the Postal Regulatory Commission. In Order No. 1010 the Commission instituted a proceeding under 39 U.S.C. 404(d) and is assigned Docket Number A2011-68 to consider the appeals of the respective Petitioners.

On November 29, 2011, The United Postal Service (USPS) filed the Administrative Record.

On December 13, 2011, the USPS submitted a misplaced six page document to the PRC as a supplement.

<p>The appeals and this brief are not considered substitutes for the hard work the customers put forth. The exceptionally voluminous content this rural community caused to be in the Administrative Record speaks for itself.</p>
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The intent of this brief is to bring forth new material and further demonstrate that the Commission should remand the decision to close the Spring Dale Post Office as based on evidence abundantly provided in the Administrative Record, evidence that was omitted from the Administrative Record, evidence within this petition, evidence within appeals, negligent preparation of data, incorrect data, and other relevant issues. Upon examination of these documents, it will be found that the United Postal Service actions and conclusions were:

- A. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.
- B. Without observance of procedures required by law.
- C. Unsupported by substantial evidence on the record.

INCORRECT COSTS AND SAVINGS

Beginning on January 31, 2011, and continuing to the present (11 months), we have asked USPS to consider the alternatives we offered that would bring significant savings to this post office.

We have questioned why the post office was an EAS grade 11 when the study began, then changed to an “E” rating, but later the OIC was asked to remove the “E” rating public notice during the discontinuance study. Though currently treated as an EAS 11 grade post office, a WSC calculated “E” rating is indicated on pdf page 14 of the Administrative Record.

The “Alternative Replacement Service Errors” topic included herein shows the USPS seriously underestimated the savings of carrier service.

The lease should be renegotiated, and if that is not satisfactory, move the post office to a nice building (on main road and only ¼ mile away) that was a post office years ago. The cost may be only \$225/month. (The USPS fact sheet on pdf page 29 incorrectly states that there are no suitable alternate quarters available.)

Page 532 (pdf) of the Administrative Record indicates that closing the Spring Dale Post Office would save \$33,168 in Postmaster salary, \$11,111 in fringes (which the employee does not receive), and lease costs of \$11,319. After subtracting a supposed replacement (carrier route) cost of \$3600, the annual savings are alleged to be \$51,938.

Mr. Gary Walker, an estimator, believes these values could become \$25,000 employee pay, no additional fringes (as is now), and lease cost of \$225 X 12 = \$2,700, for a total of \$27,700. From this \$6,970 should be subtracted for the replacement cost (carrier route). The more realistic savings are only \$20,730. This is less than 40% of the savings claimed by the USPS.

The USPS is negligent regarding U.S.C. 39 404(d)(A)(iv) “The economic savings to the post office resulting from such closing or consolidation.”

FAILURE TO CONSIDER PUBLIC INPUT

There can be little doubt that those examining letters and appeals from the public are inundated with reference to U.S.C. 39 404(d) in general, and U.S.C. 39 404(d)(2) in particular.

In a frenzy to protect its perfect storm against small post offices in rural America, the USPS avoids adhering to any reasonable interpretation or standard of practice relative to the “effect of such closing or consolidation on the community served by such post office” as set forth in U.S.C. 39 404(d)(2)(A)(i). This truth of abuse is so blatant that PRC Docket N2011-1 has been filled with evidence of unacceptable performance by the USPS.

As to the “*effect of such closing or consolidation on the community served by such post office*” on our Spring Dale Post Office, please consider how a small rural post office with 88 boxes and no other form of delivery can cause an Administrative Record to contain 554 pages. Obviously, there is overwhelming support from customers and those who live in the surrounding area, and the many valid reasons for this support have resulted in a disproportionately large record.

It is impossible for there to be that much support without a solid basis and therefore a right to exist as per the intent of postal laws. Irreversible impact on our community is well established in the Administrative Record. The customers’ letters are accurate and contain evidence that Spring Dale has evolved as a unique community with unique needs for its post office.

These documents explain that the post office is literally a lifeline for some people. There is no other business or establishment that can provide this vital service. People are expected to be here at a certain time, and if they are not, the chance of illness or accident is considered. That has been successful before and will be again.

The documents point out that Spring Dale hill lies between Spring Dale and the nearest post office (Meadow Bridge), and this hill is treacherous in winter. One example is the letter of Wanetta McKinney on pdf page 155 of the Administrative Record.

The documents contain letters from local businesses that show, beyond any doubt, maintaining effective and regular service is simply impossible. That is nothing less than 100% fact. The stale, off-point, irrelevant, boilerplate replies provided by USPS are utterly ridiculous. USPS does not even attempt to offer a believable solution, yet they move ahead with closure knowing they will seldom be held responsible for failing the business owners and disregarding the law.

During our community meeting Mr. Walker brought his important bid documents in and showed Kevin Clark (the USPS representative) how alternative service could not work for him. Closure of the Spring Dale post office will certainly result in my \$500 per month postage being stopped. I will be forced to use a private carrier.

We have advised that the USPS did not consider the fact that other communities now use this post office because theirs has closed, and the demand will increase as other post offices in this area are closed.

There are many other factors indicated in the responses of the citizens, but to avoid repetition and duplication, I request reference be directly made to the Administrative Record.

A careful review of documents presented by customers of the Spring Dale Post Office will show a realistic adverse impact on this community. Callous disregard for the customers' valid concerns causes the USPS to be in violation of U.S.C. 39 404(d)(5)(A) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law."

OPEN MEETING VIOLATIONS

A representative of Kevin Clark (Manager, Post Office Operations) contacted the OIC at the Spring Dale Post Office by phone on or about March 23, 2011, concerning a date and time for a Community Meeting as required by Title 39. Later that day, certain postal customers, including local business owners, objected to the date, time, and place for the meeting. It was requested that the meeting be moved to a date, time, and place which enabled attendance after 5:00 p.m. The OIC immediately asked to have these aspects of the meeting changed, but was refused by Mr. Clark's office.

This is not in compliance with Handbook PO-101, part 262, "Selecting Date and Location," which is quoted in part as follows:

"Discuss the time and location of the community meeting with the postmaster or OIC. Be sure to schedule the meeting at a time that encourages customer participation, such as during an evening or weekend. Potential community locations include a community center, church meeting room, city hall, school, or the Post Office. Designate a set time for the meeting, but be flexible enough to extend the meeting if necessary to answer customer questions."

No changes in the meeting schedule were permitted at Spring Dale; however, a list of meeting times and locations, as made available to us by the office of Congressman Nick Joe Rahall, indicates meetings were held at 6:00 p.m. (after closing) for the Eccles, Amigo, Raleigh, Lanark, Glen White, Rhodell, Napier, Asbury, Eckman, Wayside, Elkhorn, Jenkin Jones, Hensley, Cass, Lahmansville, Norton, and Auburn post offices, all in WV.

The meeting was convened by Kevin Clark without consideration to date, time, and place. As indicated in the numbered list below, there was significant abuse of the Sunshine Laws and Open Meeting Laws.

1. Repeated requests to audio record the meeting were denied by Mr. Clark. Though no attempt to record was repeated, we were again warned during the meeting to not record. Mr. Clark apparently failed to realize that Handbook PO-101 does not permit him to record our meeting, but nothing should prevent the public from making an audio recording, provided it is discreet and does not interfere with the meeting.
2. When Mr. Clark made his introductory statements, and several times thereafter, he was clear that the intent to close was based on profit. Even when the customers pointed that

fact out to him, he never at any time denied it, and he was argumentative with several as to the profit-based reason (deficit) to close this post office.

3. Three customers informed Mr. Clark that the essence of the meeting was lost because his “secretary” was taking inadequate notes. Upon our questioning her (during the meeting) we noticed she seriously missed the impact and intent of many statements made by the people. We informed him and her that she was not using shorthand or any other method to adequately record important aspects of the meeting. In one case he rudely responded that our concern was duly noted. There can be no doubt that the official record does not portray or accurately express the in-depth concerns of the customers.
4. We were informed that a summary of our comments and questionnaire results were to be made, and they were to be used by those who would make the closure decision. As mentioned herein, documentation of the meeting is not adequate for this. Additionally, we understand this data is to be compiled by Paul Bradshaw, who, with all due respect, had only two weeks’ experience (as of April 11, 2011) in this regard. We understand Kevin Clark had only ten months’ experience directly relative to detailed discontinuance procedures. (Those who make the final decisions will do so with incomplete, inaccurate data as a result of errors and lack of experience.)
5. Before some people were finished with a comment, others were allowed to interrupt.
6. The weather was nice; therefore, the meeting could have been held outside as suggested by us. People were “packed” into two rooms and those in the back room could not hear or speak, so as to appropriately respond or interact.
7. Several people left because of overcrowding before having an opportunity to get involved or sign the roster.
8. Mr. Clark appeared rude and unfair in regard to the OIC. She asked to speak several times, but was denied until nearly everyone left, and then he permitted others to interrupt her.
9. On Thursday, April 28, Delegate David Perry attended a public meeting in Beckley, WV, pertaining to post office discontinuances. He indicated that during the meeting, Kelly Dyke spoke on behalf of Congressman Rahall’s office and related her opinions commonly shared by us and other post offices in which Kevin Clark held meetings. She stated that generally Mr. Clark was overbearing, put the customers through indignant treatment, and read a seven-point “conclusive” message to customers implying a dogmatic set of reasons to justify closures.

The rights of the people are guaranteed by law and policy in regard to attending and participating in a public meeting, and clearly those rights were prevented. The following excerpt (in blue) found in PRC Docket N2011-1 is characteristic of unacceptable behavior by the USPS representative at the Spring Dale public meeting. (I have underlined portions relevant to the Spring Dale meeting.)

REPLY BRIEF OF JEFFREY MUSTO, ON BEHALF OF THE CENTER FOR STUDY OF RESPONSIVE LAW. (November 11, 2011)

“...The USPS apparently continues to believe, despite evidence offered by the National League of Postmasters during this proceeding, that the public notice and comment procedures that it has pursued have indeed afforded appropriate public participation in and knowledge of the process. This is especially disturbing considering evidence that the NLP has offered that puts this at question: accounts of public meetings held during the workday when many can’t attend them, held in a different town, restrictions on recording the public meetings, inadequate responses provided by postal officials to the questions posed by citizens of some communities, and public officials who failed to record public comments during the meetings so that they could be included in the discontinuance review process. The Center for Study of Responsive Law has already addressed this in other documents submitted to the Commission, but this is especially troubling given that the scenarios outlined above leave the consumers and citizens that would be affected most by the RAOI without an adequate voice in this process. ...”

IMPORTANT DOCUMENT MISSING FROM RECORD

Our citizens group had created an important document during the proposal phase, and our attorney, Charles Johnson, had attached it in his letter to USPS dated July 14, 2011. Bringing forth the issue that this document was lost in not simply a legal exaggeration to support a technicality.

This unique document was the only detailed source of many circumstances and events important to all involved in deciding the fate of the Spring Dale Post Office, including the area manager, the district manager, and the vice president of operations. It was a foundation for our efforts.

We never realized it was missing until I examined the Administrative Record on the PRC Web site. Mr. Paul Bradshaw, Post Office Review Coordinator, in Charleston, WV, has confirmed the document had never been properly included in the Official Record.

When Manon Boudreault, Public Representative for Docket A2012-68 (Spring Dale P.O.), and I spoke about this, she sent the following email (in blue) to Adriene M. Davis:

From: BOUDREULT, MANON A [mailto:manon.boudreault@prc.gov]
Sent: Friday, December 09, 2011 4:53 PM
To: Davis, Adriene M - Washington, DC - Contractor
Subject: Docket A2012-68 Administrative Record seems to be missing enclosure/comments

Good Afternoon,

I am the Public Representative for Docket A2012-68 (Spring Dale, WV Post Office Appeal) and the Petitioner noted that a 6-page letter (conveying citizen concern details) was omitted from the Administrative Record filed with the PRC (the specific enclosure and citizen comments are referred to in Mr. Johnson's letter attached below).

Could you let me know if the enclosure is available/was retained or inadvertently omitted? The AR can't be emailed to you directly but I've attached the PRC web link and extracted Mr. Johnson's letter (for your convenience) where /as it appears in the AR on pages 432-435 in the PDF on our website-link is below.

Sincerely,

Manon Boudreault
Public Representative for Docket A2012-68

After a series of email exchanges between Manon Boudreault, Adriene M. Davis, and attorney Jacob D. Howley, the missing document was found and was added by the USPS as a supplemental filing to our Docket 2012-68 at the PRC Web site on December 13, 2011. The email ([in blue](#)) confirming this follows:

From: Howley, Jacob D - Washington, DC [<mailto:Jacob.D.Howley@usps.gov>]
Sent: Monday, December 12, 2011 4:14 PM
To: BOUDREAUULT, MANON A
Subject: RE: Docket A2012-68 Administrative Record-missing info is 6 pages and has unique information other than this submission you found

Ms. Boudreault:

The Discontinuance Coordinator managed to find the original letter from Mr. Johnson, with the enclosure of Mr. McClung's letter to Mr. Johnson. It seems there had been a misunderstanding about the enclosure, but it should have been included in the Administrative Record. I will file this with the Commission as supplemental information, and it will be posted in the affected facilities. Thank you very much for bringing this oversight to my attention. Please let me know if further assistance would be helpful.

Jacob Howley
Attorney, Legal Policy & Legislative Advice
U.S. Postal Service Law Department
475 L'Enfant Plaza, Room 6027
Washington, DC 20260-1137
phone: +1 / 202 268 8917
fax: +1 / 202 268 5628

The misplaced six-page document (our attorney's attachment) was fundamental to our defense in defending the Spring Dale Post Office, and it was an improper procedure of significance to have not include it in the Official Record/Administrative Record. A reduced in size copy of the original attachment ([in red](#)) begins on the next page.

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Mr. Charles M. Johnson, Attorney at Law:

As previously discussed, we are providing you this six page document to offer our opinions relating to procedural discontinuance irregularities for the Spring Dale, WV post office.

There are two primary and distinct reasons that “The Concerned Citizens for the Spring Dale Post Office” (hereinafter referred to as CCSDPO) has been formed to contest the proposed discontinuance of our post office.

1. There is abundant evidence that warrants the need for a rural post office in the community of Spring Dale, WV. These reasons have been made known to the United States Postal Service (USPS) in detail by numerous replies to a pre-proposal questionnaire. (An attempt to participate in a public meeting for this purpose was futile.)
2. There is evidence that the USPS is more interested in going through the statutory motions required by law and policies to reach a predetermined conclusion than in recognizing their true motive is financial, and that the rights of the people are being abused and violated. The legitimate input and rights of the people, as provided by open meeting laws and the sunshine laws, are being responded to in a manner that will drastically interfere with the lives of customers and the health of their community.

As set forth in part 221h of USPS Hand Book PO-101, a letter dated January 31, 2011, from Teresa Price, Post Office Review Coordinator, directed Mrs. Patti Burwell, OIC for the Spring Dale, WV, post office (zip 25986) to complete a Windows Transaction Survey, Survey of Incoming Mail, and Survey of Dispatched Mail for a two-week period.

This unexpected event occurred suddenly and in unison with the intent of the USPS to close approximately 2,000 post offices nationwide, and 31 in this district for economic reasons (a deficit). Therefore, the actual motive for closure blatantly violates the intent of Title 39: Postal Service, part 241.3 – (Discontinuance of Post Offices). Part 243.1 sets forth a strict protocol to be followed so as to protect the rights of the public. In particular and relevant to small post offices is **39 U.S.C. 101 - Sec. 101. Postal Policy** which is quoted as follows:

(a) The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people.

The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people.

It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.

The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people. (b) The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining.

No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.

The significance of 39 U.S.C. 101 – sec 101 is underscored in the “**Post Office and Retail Postal Facility Closures: Overview and Issues for Congress**” by Kevin R. Kosar and dated August 7, 2009. In a bulleted list under “Issues and Possible Options for Congress” Mr. Kosar states, “Inherent to the current postal law is the assumption that some portions of the United States provide profitable markets for postal services, while others do not, and that the former should subsidize the latter. Thus, current law forbids the USPS from closing “small post offices solely for operating at a deficit,” and it requires the USPS to “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining (39 U.S.C. 101(b)). The law does not forbid closures of large facilities located in suburban and metropolitan places. The USPS’s present facility closure proposal may steer clear of the law’s prohibitions. However, the USPS’s selection of facilities in metropolitan areas for closures may raise equity concerns in affected areas, especially if these urban areas already are subsidizing more rural places. The USPS and Congress may wish to devise some means to address possible complaints about equity.”

Another issue unsupported by Title 39 is relating the proposal to close with the retirement of the postmaster on 5/31/2009. She was replaced by a pleasant and competent OIC who worked with her at Spring Dale for 21 years. It seems clear that information

on policies as provided in Handbook PO-101, part 212.4 and part 213.1 (Postmaster Vacancy) is being misused in a thinly veiled attempt to proceed with unjustifiable proposal investigations and the ultimate closure of many post offices, including the Spring Dale post office. The intent of 213.1 is unmistakable in that such abuse is to be avoided and is quoted as follows: *“A Postmaster vacancy may lead to a decision to conduct a study for evaluating a post office workload and the needs for the community. However, the fact that an office is vacant does not, in and of itself, constitute justification to discontinue a post office.”*

Part 242 (Justification for Discontinuance) consists of four examples to be considered as justification for discontinuance. Only item “c” (Postmaster Vacancy) is relevant and is in conflict with 212.4 and 213.1. This is further confirmed by a note at the end of these examples which reads in part, *“In and of itself, any of the various conditions discussed in part 212 do not generally constitute justification for discontinuance...”*

A significant result of the aforementioned surveys was a determination that windows transactions had decreased and therefore the OIC workload has declined. This is leveraged from the Postmaster Vacancy policy.

This is an unsubstantiated implication indicating Spring Dale has a unique loss of business, but in reality, this P.O. is unfairly singled out. It is well established in the media that the decline is general and is nationwide. Furthermore, substantiating evidence for the Spring Dale post office is not provided to show graphically (or otherwise) our comparative actual rate and amount of decline as related to the state or national average. Additionally, there is no historical declination trend data provided for this location. There is evidence that the formula used to determine windows transaction data is unrealistic, and for a rural post office errs toward values favoring discontinuance. These issues render the second paragraph of the questionnaire she completed misleading, irrelevant, and inadequate.

With disregard to these facts, the United Postal Service moved forward with the discontinuance study (Pre-proposal Investigation).

A representative of Kevin Clark, (Manager, Post Office Operations) contacted the OIC at the Spring Dale post office by phone on or about March 23, 2011 concerning a date and time for a Community Meeting as required by Title 39. Later that day, certain postal customers, including local business owners, objected to the date, time, and place for the meeting. It was requested that the meeting be moved to a date, time, and place which enabled attendance after 5:00 p.m. The OIC immediately asked to have these aspects of the meeting changed, but was refused by Mr. Clark’s office.

This is not in compliance with Handbook PO-101, part 262, **“Selecting Date and Location”** which is quoted in part as follows:

“Discuss the time and location of the community meeting with the postmaster or OIC. Be sure to schedule the meeting at a time that encourages customer participation, such as during an evening or weekend. Potential community locations include a community center, church meeting room, city hall, school, or the Post Office. Designate a set time for the meeting, but be flexible enough to extend the meeting if necessary to answer customer questions.”

No changes in the meeting schedule were permitted at Spring Dale; however, a list of meeting times and locations, as made available to us by the office of Congressman Nick Joe Rahall, indicates meetings were held at 6:00 p.m. (after closing) for the Eccles, Amigo, Raleigh, Lanark, Glen White, Rhodell, Napier, Asbury, Eckman, Wayside, Elkhorn, JenkinJones, Hensley, Cass, Lahmansville, Norton, and Auburn post offices, all in WV.

The meeting was convened by Kevin Clark without consideration to date, time, and place. As indicated in the bulleted list below, there was significant abuse of the Sunshine Laws and Open Meeting as defined in **§6-9A-1. (Declaration of legislative policy)** of the WV Code.

- Repeated requests to audio record the meeting were denied by Mr. Clark. Though no attempt to record was repeated, we were again warned during the meeting to not record. Mr. Clark apparently failed to realize that Handbook PO-101 does not permit him to record our meeting, but nothing should prevent the public from making a audio recording, provided it is discreet and does not interfere with the meeting.
- Mr. Clark’s opening remarks included demeaning comments concerning UPS, Fed EX, etc. that were not appropriate and one customer who uses UPS and USPS services took exception to them.

- When Mr. Clark made his introductory statements, and several times thereafter, he was clear that the intent to close was based on profit. Even when the customers pointed that fact out to him, he never at any time denied it, and he was argumentative with several as to the profit based reason (deficit) to close this post office.
- Three customers informed Mr. Clark that the essence of the meeting was lost because his “secretary” was taking inadequate notes. Upon our questioning her (during the meeting) we noticed she seriously missed the impact and intent of many statements made by the people. We informed him and her that she was not using shorthand or any other method to adequately record important aspects of the meeting. In one case he rudely responded that our concern was duly noted. There can be no doubt that the official record does not portray or accurately express the in-depth concerns of the customers.
- We were informed that a summary of our comments and questionnaire results were to be made, and they were to be used by those who would make the closure decision. As mentioned herein, documentation of the meeting is not adequate for this. Additionally, we understand this data is to be compiled by Paul Bradshaw, who, with all due respect, had only two weeks’ experience (as of April 11, 2011) in this regard. We understand Kevin Clark had only ten months’ experience directly relative to detailed discontinuance procedures. (Those who make the final decisions will do so with incomplete, inaccurate data as a result of errors and lack of experience.)
- Before some people were finished with a comment, others were allowed to interrupt.
- The weather was nice; therefore, the meeting could have been held outside as suggested by us. People were “packed” into two rooms and those in the back room could not hear or speak, so as to appropriately respond or interact.
- Several people left because of overcrowding before having an opportunity to get involved or sign the roster.
- Mr. Clark appeared rude and unfair in regard to the OIC. She asked to speak several times, but was denied until nearly everyone left, and then he permitted others to interrupt her.
- On Thursday, April 28, Delegate David Perry attended a public meeting in Beckley, WV, pertaining to post office discontinuances. He indicated that during the meeting, Kelly Dyke spoke on behalf of Congressman Rahall’s office and related her opinions commonly shared by us and other post offices in which Kevin Clark held meetings. She stated that generally Mr. Clark was overbearing, put the customers through indignant treatment, and read a seven point “conclusive” message to customers implying a dogmatic set of reasons to justify closures.

§6-9A-1. Declaration of legislative policy.

The Legislature hereby finds and declares that public agencies in this state exist for the singular purpose of representing citizens of this state in governmental affairs, and it is, therefore, in the best interests of the people of this state for the proceedings of public agencies be conducted openly, with only a few clearly defined exceptions. The Legislature hereby further finds and declares that the citizens of this state do not yield their sovereignty to the governmental agencies that serve them. The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

The West Virginia Supreme Court of Appeals has stated the goals of the Sunshine Law are promoting people awareness, public participation, and official accountability. *McOmas v. Board of Education of Fayette County*, 197 W.VA 188 (1996) at 196; also in the *McOmas* case the court ruled that *they should be given an expansive reading of the Open Meeting Act to achieve its far reaching goals, and that a narrow reading would frustrate the legislative intent and negate the purposes of the statute.*

Handbook PO-101, part 261 reinforces the intent of **§6-9A-1. Declaration of legislative policy** as follows:

26 Conducting a Community Meeting

261 General

The community meeting is an excellent opportunity to explain service alternatives, to answer customer questions about the proposed alternatives, and to help customers complete their questionnaires. At the meeting, provide the customers with reasons for the proposed change in service. State the advantages and disadvantages for them and for the Postal Service (i.e., tell customers how their address will be affected and whether box fees will increase if they choose that service at a neighboring Post Office). Make it clear that no final decision has been made. Do not argue or raise your voice with customers. Always tell them the truth. If the answer to a customer’s question is not apparent, obtain the customer’s name and address and respond in writing after the meeting. Make notes of customer concerns and responses for inclusion in the official record. However, do not tape the meeting because this inhibits open discussion. Immediately terminate the meeting if it gets out of control.

Clearly, the rights of the people are guaranteed in regard to attending and participating in a public meeting, and clearly those rights were prevented.

On March 18, 2011, 110 Postal Service Questionnaires were received by the OIC to be placed in the 96 customer P.O. Boxes. The most significant source of confusion relative to these questionnaires is question #3 as follows: *“If you previously received carrier delivery, there will be no change of address to you delivery service – proceed to question 4. If you previously received Post Office box service or general delivery service, complete this section. How do you think carrier route delivery service compares to your previous service?”* The four choices were Better, Just as Good, No Opinion, and Worse. The question concluded with, *“If yes, explain:”* This question is obviously confusing, and several asked for clarification. This is excessively out of conformity with open meeting laws and the intent of PO-101, part 252.1. After the questionnaires were mailed back to the USPS, many customers informed the citizens group (CCSDPO) that they later realized they had answered inaccurately. There are 17 replies noted in the official record as having “No Opinion” whereas, in reality, most if not all, would have indicated being *“Unfavorable to Proposal.”* In all probability the official records should reflect 91 people out of 92 responses wish to keep the Spring Dale post office open. It is significant that out of 37 questionnaires completed by customers in the Nassau, MN example, 21 expressed no opinion (See PO-101, Exhibits 531 and 532.1). This raises into question that a persistent defect exists in the manner of seeking customer opinions as to an opinion in regard to alternate delivery methods. The inclusion within the PO-101 handbook of samples (Nassau and Popejoy) in regard to USPS responses further underscores the probability that the entire discontinuance is a predetermined means to justify a foregone conclusion of discontinuance. The responses of these USPS examples closely resemble those for Spring Dale.

The public records additionally contain defects including, but not limited to, the following:

1. Total post office boxes at time of the survey was 96, not 88. This error is visible in several aspects of the proposal process. The total count of people who routinely use the Spring Dale post office greatly exceeds 96. These people received no questionnaire and are incorrectly absent from the total customer count.
2. The Community Meeting Roster indicates 57 people present. This is incorrect because several left due to overcrowding and before signing the roster.
3. The calculations indicating the amount of deficit reduction by adding carrier delivery is flawed in that 46 boxes will not be enough, and any expectation the remaining customers will open boxes in another post office is unrealistic. The “status quo” reduction in expense cannot correctly include the \$11,111 for fringe benefits. The suggestion that the lease (\$11,319) be renegotiated has been ignored. Additionally, the accuracy of the entire “form calculation” is questionable.
4. The Rainelle, WV post office should be considered an affected post office, but there is no proposal available for public review there.
5. The expectation that the Additional Comment Form will be completed is unrealistic. The customers seldom notice the posted proposal, and when they do, they consider their completion of the original questionnaire final and adequate. It would be a serious error to conclude that a limited number of additional comments implies acceptance to the responses of concerns as provided by the USPS. To the contrary, the vast majority of customers questioned by the citizens group are very dissatisfied with the responses to their concerns. The responses are considered irrelevant and merely a bureaucratic conformity to title 39 of the code.

Sincerely,

Paul McClung, Member CCSDPO

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If the USPS has any legal, ethical, or moral obligations relative to due process, rights of the public, or community impact, the missing document would be expected to have an influence on their decision relative to closure. Failure to include this significant document in the record is sufficiently harmful to warrant remanding our case to the USPS as per 39 U.S.C. 404 (d)(5)(B) “without observance or procedure required by law.”

ALTERNATIVE REPLACEMENT SERVICE ERRORS

In his appeal letter to the PRC dated November 14, 2011, Mr. Gary Walker, an experienced estimator, questioned the cost of replacement services. As indicated on pdf page 28, the USPS contends an added expense for a carrier of only \$3600 per year.

That alleged cost reduces to an unrealistic \$15 per day, but if a maximum degree of effective and regular service is to be maintained, then the additional distance traveled by the carrier (as suggested by the USPS) of 2 miles is also in error.

The distance to houses in the vicinity of Jimmy Dale Henson on Ford Knob would add 2 miles; the loop from route 29 to provide service for Bill Flanagan and Monte Johnson would add ½ mile; delivery to Bernie Halsey and others on the Ham Hollow road adds 1 ½ miles; delivery to James Puckett, Jr. adds 1 ½ miles, and delivery to Phillip Patterson and others living on Coon Creek road adds ½ mile. This makes a total of 8 miles the carrier will travel, and is 6 more miles (tripled) than indicated.

The USPS also indicates there will be 48 boxes added to the rural route. In this small community, where changes in delivery service are openly discussed, it is apparent that the contended 48 boxes is incorrect. At most, perhaps 10% will not use a mail box; therefore, (based on 88 P.O. customers as indicated by USPS), there will be an additional 79 boxes added to the rural route.

These two factors indicate calculations in the “Rural Route Cost Analysis Form” (Administrative Record @ pdf Page 28) are a negligent and serious underestimate for the cost for replacement services.

Applying a more realistic 79 additional boxes and 6 additional miles to the “Rural Route Cost Analysis Form” yields carrier cost of \$6970/year.

Further complicating this issue is a need for the present carrier route to be modified. In any case, the carrier already has trouble returning to the Meadow Bridge Post Office quickly enough to meet the dispatch time. This has already resulted in mail not being delivered to some boxes in the late evening.

Spring Dale is a case where the Postal Service will not provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining” as required by U.S.C. 39 (d)(2)(A)(iii).

The Postal Service has failed to obtain accurate data for carrier replacement service costs. It negligently underestimates “the economic savings to the Postal Service resulting from such closing or consolidation” as per U.S.C. 39(d)2(A)(iv).

These issues in regard to the carrier route indicate an abuse of discretion thus establishing a need for enforcement of USD 39(d)(5)(A) “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.”

POST OFFICE SURVEY SHEET INCORRECT

Statement #3 on the Post Office Survey Sheet (pdf page 23) fails to indicate whether the lease has a 30-day cancellation clause. (Indicated as “Not Known.”)

Statement #7 indicates the OIC currently works at several different offices. This has not been true for quite some time. She is the only employee here, and if she works elsewhere, another would have to work here for her.

Additionally, other post offices in this area closed years ago, and others will be closing soon. This leaves her with no other opportunities to work.

This post office already serves customers from other communities that have lost their post offices and demand here will increase as the others close.

The “Post Office Survey Sheet” has conflicts with the “Post Office Closing or Consolidation Proposal Fact Sheet” (pdf page 29). The information on leasing and alternate quarters is contradictory.

It was a foregone conclusion by the USPS that this post office would close. The paper work could be poor in quality because it was nothing more than a required legal means to an end. I reiterate, U.S.C. 404(d)... has been abused and violated throughout this entire closing process. The final word for USPS remains “*a maximum degree of effective and regular service will be maintained...*” That cliché is, of course, incorrect.

TOTAL CUSTOMERS

The Administrative Report indicates 88 box holders and no other source of customers. This indicates a total of 88 customers whereas there are approximately 130 customers who make regular use of the Spring Dale Post Office. These additional customers are from surrounding areas and have already been forced to find another post office after theirs closed years ago. These customers do not have a box in this or any other post office, but they rely on our post office because it is on-route, and the service is often considered much more satisfactory than the off-route alternatives. With the pending closure of additional post offices in the surrounding area, others will soon be using the Spring Dale Post Office.

EFFECT ON EMPLOYEE

The Spring Dale Post Office has only one employee. She has been there for 21 years, is very friendly, has an excellent work ethic, and cares for her customers. During this PRC appeal phase she learned her husband has cancer and will not be able to work for an extended period of time. They are without insurance and are already facing large expenses. This job was always an important source of income, but now it critical to their financial survival.

U.S.C. 39 404(d)(2)(ii) “The effect of such closing or consolidation on employees of the Postal Service employed at such office” was always worthy of consideration, and now plays an even greater role.

HANDBOOK PO-101USED DISCRIMINATELY

When observing the general process the USPS adheres to in preparing to close a post office, one sees meticulous details traceable directly to Handbook PO-101. The forms used to close post offices have been generically designed and are ready for use straight from the handbook. Detailed instructions for conduct and procedure when organizing a public meeting are also included, as are examples of appeals and much more. Handbook PO-101 would provide vital guidance in the implementation of U.S.C. 39 404 if permitted, but parts from it are cherry picked with disregard to its intent. It is followed enough to diminish chances a post office might litigate, but ignored in insuring U.S.C. 39 404(d) is honored.

CONFUSION ON QUESTION #3 OF QUESTIONNAIRE

A "Postal Service Customer Questionnaire Analysis Form" is on pdf page 339 of the Administrative Record. We contended during the proposal phase that it incorrectly listed 1 customer as favorable to the proposal and 17 customers as having no opinion. We were able to contact 16 of these 18 customers. Their signatures attest that they were confused by question 3 and wish to correct their error herein. Jim Hamrick and Frances Zickafoose were out of town, but as indicated by their letters, both support this post office. Irma Hamrick's question is answered correctly but is hard to read.

As per the form, 74 out of 92 are opposed to closure which is good, but if question #3 was not deceptive, at least 90 out of 92 customers are aggressive in opposing closure. The signature sheet indicating their true opinions follows:

CUSTOMERS WHO INCORRECTLY ANSWERED QUESTION #3 OF QUESTIONNAIRE

After the Postal Service Questionnaires had been mailed back to the USPS, several customers informed the citizens group (CCSDPO) that they later realized question #3 was answered inaccurately. Some customers have stated that fact in previous replies to the USPS. For example, see Administrative Record, Page 237 (pdf) as submitted March 23, 2011 by Tim Runyan. Petitioner Paul McClung had also explained failure of the questionnaire in a six page attachment included in a letter to USPS from the citizen's group attorney, Charles Johnson. That very detailed and important attachment apparently was removed from Mr. Johnson's letter by the USPS during the proposal phase. It was therefore unavailable for consideration during the USPS decision to close the Spring Dale Post Office.

The Administrative Record for the Spring Dale, WV Post Office has now been downloaded; therefore, relevant post office customers now have an opportunity to review question #3 of the questionnaires as provided by USPS on March 18, 2011. An excerpt from the attorney's original attachment explaining significant confusion of question #3 is as follows:

Quote from question #3, "If you previously received carrier delivery, there will be no change of address to you delivery service – proceed to question 4. If you previously received Post Office box service or general delivery service, complete this section. How do you think carrier route delivery service compares to your previous service?" The four choices were Better, Just as Good, No Opinion, and Worse. The question concluded with, "If yes, explain:" This question is obviously confusing, and several asked for clarification. This is excessively out of conformity with open meeting laws and the intent of PO-101, part 252.1. There are 17 replies (out of 92 total) noted in the official record as having "No Opinion" whereas, in reality the statement and signatures below indicate their true intent. As can be seen, the questionnaire is confusing.

We, the undersigned, did not understand question #3 and therefore failed to indicate that we considered carrier delivery worse relative to existing service:

Name	Pdf Page in Record	Signature (or Explanation)
Amy Hardy	58	Amy Hardy
Jim Hamrick	60	
Rita Moody	67	Rita Moody
Amanda Kincaid	69	Amanda Kincaid
Brenda Price	81	Brenda Price
Elaine Meadows	85	Elaine Meadows
Billy Carr	93	Billy Carr
Roby Midkiff, Jr.	95	Roby Midkiff, Jr.
Ruth Goddard	125	Ruth Goddard
Frank Hicks	127	Frank Hicks
Frances Zickafoose	131	
Daniel Cook	137	Dan Cook
Wanetta McKinney	155	Wanetta McKinney
Russell Redden	163	Russell Redden
Clifford Martin	167	Clifford Martin
Irma Hamrick	193	
Rose Marie Brown	195	Rose Marie Brown
Glenda Cooper	220	Glenda Cooper

SUMMARY

The USPS representatives who are involved in closures make a living at being absolutely expert in matters that overwhelm an inexperienced public, but it is clear to the average person that something is very wrong. These people read stories of closure in the newspaper and realize the letter and spirit of U.S.C. 39 404(d) are dead. U.S.C. 39 404(d) has enough gray area in it to easily permit abuse by self-ordained interpreters of the law who are on a biased mission that is detrimental to, not only rural communities, but to all of America.

Customers are nudged by USPS representatives to believe that U.S.C. 39 404(d) will be seriously considered. These good people obediently and unwittingly complete questionnaires and write letters as encouraged by the USPS until its 38-point checklist for closure is perfect. The customers get boilerplate replies to their questions, and these replies are placed in the official record as if they had merit. Closure decisions will state there is no impact on the community, and service will be regular and effective. These statements are worn out clichés, and are an insult to customers individually and Americans collectively. The USPS replies are so bureaucratic that they are interchangeable, not only from customer to customer, but from state to state.

We, in a very small rural community, are credited by USPS as having 88 customers. Yet, we have 92 replies to our questionnaire; 94 signatures on our petition; an underestimated 57 people at the community meeting (several left without signing because they could not get access to the roster); six letters of appeal; and so many customer letters and other factors that the Administrative Record is 554 pages long. We have dotted every “I” and crossed every “T.” We have repeatedly demonstrated that U.S.C. 39 404(d) should protect us. Surely we deserve at least the dignity of the USPS reconsidering our case. We respectfully request this Commission remand our case to the USPS.

Sincerely,

Paul McClung, Petitioner